



OVERSIGHT REVIEW COMMITTEE

ANNUAL ASSESSMENT and RECOMMENDATIONS

**Fiscal Year
2004 REPORT**

OVERSIGHT REVIEW COMMITTEE MEMBERS

**Kelvin Simmons, Director
Department of Economic Development**

**The Honorable Maida Coleman
Senator 5th District**

**The Honorable Craig Bland
State Representative 43rd District**

**Lloyd Conley
Professional Services & Resources, Inc.**

**Robert Crouch
Department of Labor and Industrial Relations**

**Mildred Glasper
Department of Mental Health**

**Suzanne Joyce
Tech Guard Security**

**Duane Kraft
Associated General Contractors**

**James Webb
St. Louis Minority Business Council**

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Introduction and History

The 2004 report of the Oversight Review Committee (ORC) is issued pursuant to the authority and responsibility given the Committee through section 37.020.2, Missouri Revised Statutes and Executive Order 98-21 (EO). The Executive Order reads in part:

This program shall be reviewed annually to monitor the level of MBE/WBE participation achieved in state contracting areas during the previous year. A written assessment of the program, and whether its continuation is necessary, shall annually be performed by the statutory Oversight Review Committee and delivered to the Governor and the General Assembly.

The report contains the assessment of the Minority Business Enterprise and Women Business Enterprise (MBE/WBE) program and recommendations to increase MBE/WBE contracting participation in the state.

The ORC met from August through November 2003. The ORC reviewed data and information provided by the Office of Administration, Office of Equal Opportunity (OEO), the Department of Economic Development, the Missouri Department of Transportation, the Office of Administration, Division of Design and Construction and Division of Purchasing and Materials Management (DPMM), the Department of Natural Resources, the State Treasurers Office and other interested government agencies and private businesses.

Creation of the Oversight Review Committee, Disparity Study and Executive Order 98-21.

In 1990 the Missouri General Assembly enacted Senate Bill 808 and 672 which

required the completion of a disparity study to validate unequal treatment in state contracting. It further created the Oversight Review Committee to oversee and review the results of the disparity study.

37.020. 2...The commissioner of administration shall appoint an oversight review committee to oversee and review the results of such study. The committee shall be composed of nine members, four of whom shall be members of business, three of whom shall be from staff of selected departments, one of whom shall be a member of the house of representatives, and one of whom shall be a member of the senate.

In 1994 work on the Disparity Study began by Mason-Tillman Associates. The Disparity Study in all areas assessed found that the disparity was either “statistically significant” or “significant.”

In conclusion the Disparity Study found:

“Where disparate treatment exists due to a business owner’s race or gender, race or gender neutral measures are alone not sufficient. There are three primary race and gender –conscious methods for reducing barriers to MBE/WBE participation: mandatory utilization levels, participation goals, and preferences. A comprehensive utilization plan may incorporate components that reflect all these methods.”

In addition to monitoring the study, the Disparity Oversight Review Committee developed recommendations based upon the data compiled in the Disparity Study. By December 1997 the Disparity Oversight Review Committee presented its findings and recommendations to Governor Mel Carnahan. Based upon the findings and recommendations and other evidence in 1998, Executive Order 98-21 was issued to begin implementation of the MBE/WBE participation program in Missouri.

Executive Order 98-21 established

All state agencies shall continue to make every feasible effort to increase the percentage of goods and services procured from certified minority and women-owned businesses (MBEs and WBEs) to 10% and 5%, respectively. These efforts shall include participation in an Executive Branch Contract Compliance Council which is hereby established for the purpose of assisting agencies in implementing the policies and procedures recommended by the Oversight Review Committee pursuant to the State of Missouri disparity study...

Section 1. Assessment of Progress and Compliance

The Disparity Study identified two high-level recommendations to aid in the elimination of the discriminatory barriers impeding the full and fair participation of MBE/WBE firms in the State purchasing process. The recommendations included establishing race and gender-neutral programs that would eliminate barriers to participation, and race and gender conscious monitoring.

Race and gender-neutral programs recommendations included:

- Expanded outreach
- Timely payments
- Implementation of a financial assistance program; and
- Bonding assistance.

Race and gender conscious monitoring strategies included:

- MBE/WBE goals
- Establish the Office of Contract Compliance and the MBE/WBE Owned Business Participation Plan
- Procedures to certify MBE/WBE

participation goals in state contracting;

- Administer, enforce and monitor guidelines; develop regulations; review goals and develop uniform applications; and
- Maintenance of records and reports on progress.

Results Achieved by the State of Missouri

The primary objective of the 2003 Oversight Review Committee (ORC) was to assess the progress the State of Missouri had made in implementation of the Disparity Study Recommendations. At the initial meeting of the ORC on August 26, 2003, the Office of Administration (OA), Office of Equal Opportunity made a report to the ORC on the “Response and Results” to the recommendations from the original Oversight Review Committee.

The OEO reported to the ORC the following programs and procedures had been implemented in response to the Disparity Study Recommendations.

For Race and Gender Neutral Programs

1. Expand Outreach

To expand outreach, the Office of Equal Opportunity has established an on-line business directory that provides MBE/WBE contacts. OEO also maintains a database that has active and inactive certified MBE/WBE firms with the state of Missouri.

The Office of Equal Opportunity also uses targeted mailings to encourage on-line MBE/WBE registration and to notify participants of bid opportunities. OEO has a toll-free number to assist MBE/WBE firms. They may use this number to obtain information regarding bid history, certification, contract compliance issues or

other issues. OEO also provides technical assistance through the Office of Contract Compliance; Supplier Diversity Program; and Diversity Recruitment.

2. Timely Payment

A Subcontractor Payment Report was developed to track and address timely payments. A Subcontractor Payment Verification Request form is sent to all subcontractors on awarded state contracts. The State Compliance Officer, and OA Division of Design & Construction and DPMM monitor and investigate complaints regarding delinquent status of subcontractor payments.

3. Implement a Financial Assistance Program

To implement a Financial Assistance Program, the Department of Economic Development (DED) administers a financial assistance program entitled the Urban Enterprise Loan (UEL) program. The State Treasurer's Office administrates the MISSOURI FIRST Linked Deposit program, formerly known as "MoBucks."

4. Bonding Assistance

To provide bonding assistance the OEO and OA; DPMM have worked to significantly reduce the number of state contracts with bonding requirements. Due to cost, complexity and size of the contract, bonding requirements are still in place for some state contracts like information technology and telecommunications.

For Race and Gender Conscious Monitoring

As recommended by the Oversight Review Committee Disparity Study, the Office of Contract Compliance (OCC) is the primary vehicle to ensure compliance with the state participation goals.

The OCC shares the administration of the overall MBE/WBE program, addresses contractor complaints and assists in the review of applications for MBE/WBE waivers. OCC assists in goal setting for MBE/WBE construction projects, and investigates non-payment claims. OCC approves certification determinations, evaluates requests for object code exclusions relating to the quarterly MBE/WBE Expenditure Reports, and develops regulations to effectuate MBE/WBE requirements. Program rules are developed and codified with the Secretary of State's Office. An update to 1-CSR 10-17.040 (MBE/WBE Certification Rules) is under review.

The State Compliance Officer works with the Division of Design and Construction MBE/WBE Goal Determination Committee to annually set goals for legislatively approved design and construction projects. The State Compliance Officer works to enforce the established penalties for non-contractual compliance.

OCC certifies MBE/WBE businesses for the State of Missouri. OEO certifies state businesses and accepts reciprocal certifications with other certifying agents within the state of Missouri. OEO instituted a "Rapid Response" process to reduce the time of certifying firms who are certified with other Missouri agencies. OEO will certify out-of-state firms who present valid certification from their home state.

The MBE/WBE Certification program regularly reviews all documentation for process improvements, and maintains certified MBE/WBE availability and utilization records. OEO maintains a directory of certified MBE/WBE firms which is available on the state web page. OEO monitors the monthly MBE/WBE subcontractor utilization report that DPMM maintains.

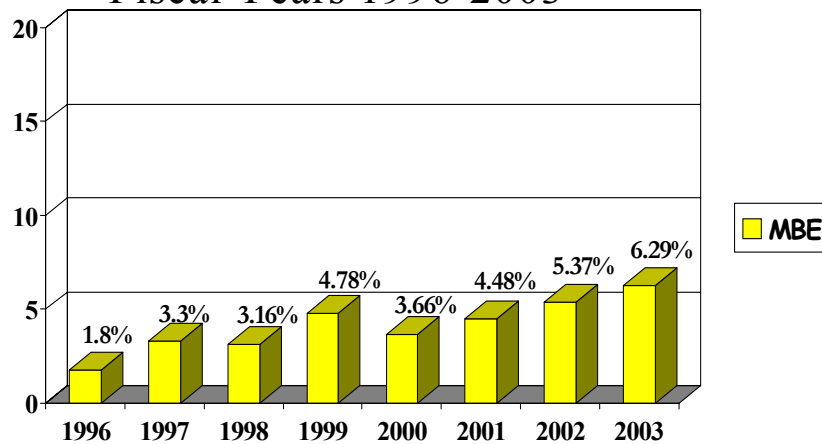
The MBE/WBE Certification program has certified over 1,500 firms. Eighty percent of the current certified firms are also electronically registered with DPMM. The Office of Equal Opportunity generates a quarterly MBE/WBE Expenditure Report, which reflects state agencies' participation levels. Executive Order 98-21 established goals to achieve 10% MBE and 5% WBE participation with a desired goal of 20% MBE and 10% WBE on all statewide and agency contracts over \$100,000. (see MBE and WBE Statewide Expenditure Figures - Appendix).

In addition, the Office of Equal Opportunity and the Division of Design and Construction conduct the following:

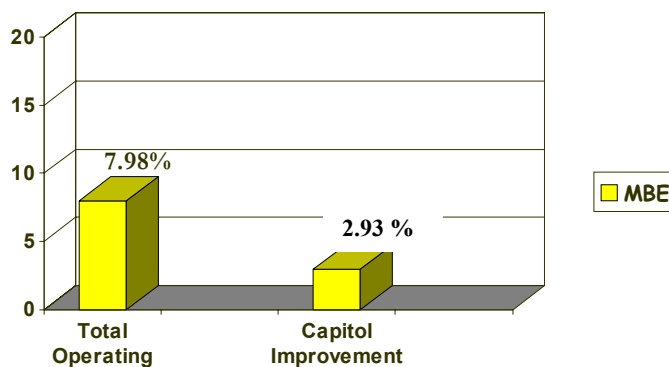
- OA, Division of Design and Construction currently holds "Partnering Sessions" on state contracts with prime contractors, subcontractors and suppliers. OEO will convene information and policy meetings to educate MBE/WBE of contract expectations and responsibilities, and develop necessary documentation to effectuate the obligations established by the MBE/WBE participation program.
- Each bidding contractor is required to submit an MBE/WBE Documentation of Participation form at the time of their proposal submission. The MBE/WBE Documentation of Participation form requires the MBE/WBE to define the type of work or services they will perform. The form further requires that the percentage of participation be defined by either the prime or the subcontractor.

The following four tables show MBE/WBE participation from 1996-2003. The Appendix of this report contains tables/charts on compliance of each state agencies from 1996-2003.

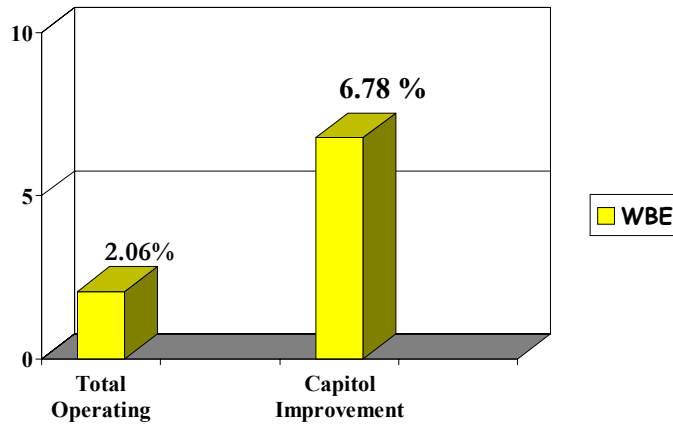
Statewide MBE Expenditures Fiscal Years 1996-2003



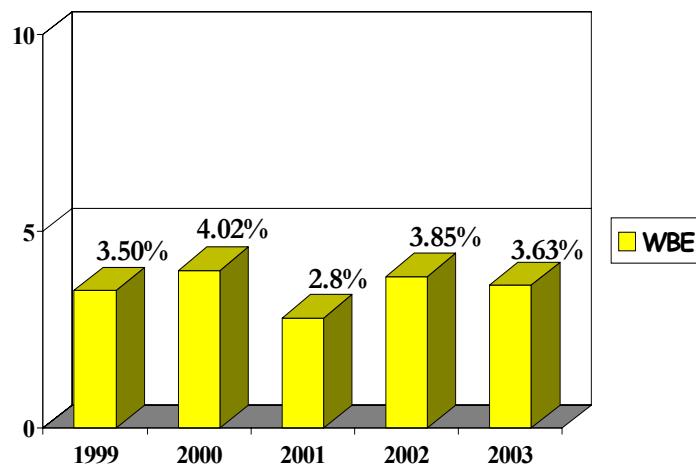
Total Operating & Capitol Improvement MBE Expenditures Fiscal Year 2003



Total Operating & Capitol Improvement WBE Expenditures Fiscal Year 2003



Statewide WBE Expenditures Fiscal Years 1999-2003



The ORC assessed the data and information presented by the OEO and used the progress as part of the basis for its recommendations. The data show progress on the part of the state with the goals and objectives of EO 98-21. The data show that the goals of Executive Order 98-21 have not been met.

In subsequent meetings of the Oversight Review Committee (ORC), the committee was given information and data on the following topics:

Legislative Mandate and 4th State Building Fund

Based on a request by the committee, a presentation was made by the Office of Administration Assistant Legal Counsel on issues that may be involved with a statute outlining the participation goals. The committee was advised of the legal parameters and requirements as outlined in City of Richmond v. Croson. The committee also received information and discussed the requirements of the Fourth State Building Bond Fund.

The Fourth State Building Bond Fund, a constitutional fund, was created in 1994. The provisions mandate the Governor develop in consultation with the State Board of Fund Commissioners a percentage plan for application by African-American, women and other minority businesses in all state bond programs, and for employment opportunity in the state construction building plan.

In 1995, the Office of Administration complied with this provision by issuing a “percentage plan for application” by minority businesses. A percentage goal was set toward increasing the number of minority firms on the bond counsel and financial advisor mailing list. The most recent report list 8 out of 36 bond counsel (22%) and 11 out of 35 financial advisors (31%) on the application list.

All construction projects issued under the Fourth State Building Bond program are completed.

Financial and Business Assistance

The ORC was informed that implementation problems consisted of barriers and drivers to development; lack of training and business support services; and, a lack of funding and regeneration. Members recommended a focus on emerging companies and stressed that Missouri must use its larger MBE/WBE businesses and grow them.

Participation by Smaller MBE/WBE firms

The Committee discussed and agreed that a few large MBE/WBE firms get a disproportionate percentage of state MBE/WBE contracts. The Committee noted that there are a lot of minority companies not getting state contracts. The Committee members believed that the state should find out why minority businesses are failing. Further the state should research and implement strategies that will help bring MBE/WBE firms on par with majority firms so that they can participate in state contracting. The ORC committee felt a major focus should be increased MBE/WBE bonding capability and providing those firms with other financial resources. The role of small and minority business growth is the role of the Department of Economic Development.

Section 2. Recommendations

After assessing the program, the committee developed recommendations to increase Minority and Women-Owned businesses in state procurement. There were other related recommendations that impact the MBE/WBE community that the committee also addressed. In addition, the Oversight

Review Committee commended the Office of Administration for convening the committee to assess the program and develop appropriate recommendations.

In light of the results to date, the Committee is on record in recommending the continuation of the program and policies as outlined in Executive Order 98-21. Further effort is warranted to achieve the goals.

Recommendations to Increase MBE and WBE Participation

1. The Office of Administration shall coordinate with the Department of Economic Development to obtain and distribute information regarding the Small Business Administration's Surety Bond Guarantee Program throughout the State of Missouri's to the certified MBE/WBE community. Support should be made available to MBE/WBE firms when the firms need to access bonding assistance.

2. The Governor should issue a new executive order that adds further procedure and policy to strengthen the requirements of Executive Order 98-21. Through the new executive order the Office of Administration shall be required to continue to work closely with all Missouri state agencies in order to encourage and improve utilization of MBE/WBE firms in conjunction with state projects and on state contracts. The State of Missouri shall further seek opportunities to encourage state agencies not meeting the targets to annually document and justify why those goals were not met.

3. The State of Missouri should encourage the use of MBE/WBE as prime vendors whenever possible. This requirement should include policy and procedures, and be incorporated in a new executive order.

4. The State of Missouri should encourage and look favorably on joint venture

partnership opportunities for prime vendors and MBE/WBE participant firms. This requirement should include policy and procedures, and be incorporated in a new executive order.

5. The State of Missouri should adopt policy and procedures that require prime contractors to be accountable to MBE/WBE subcontractor's vis-à-vis all provisions of the contract that in any manner affect the MBE/WBE subcontractor participant. The requirements would include, but not be limited to, any alterations in a contract during negotiations of an award, as well as, after an award. The prime contractor shall always apprise and include the MBE/WBE subcontractor of all contract negotiations, discussions, and events that affect the MBE/WBE subcontractor. This requirement should include policy and procedure, and be incorporated in a new executive order.

These are the five formal recommendations made by the Oversight Review Committee. The committee reviewed, studied, and discussed other issues that, although not included in the list of recommendations to increase participation, were of enough importance to be noted.

Other Related Recommendations

1. Legislation should be drafted and introduced which would require Missouri to apply MBE/WBE certification procedures that would be as restrictive as the certification procedures used by the home state domicile of the applying vendor. If the applicant vendors' home state has residency and other restrictive requirements, Missouri's procedure will be reciprocal with the requirements of each state (e.g. Texas, Ohio, and Connecticut require vendors' principal operating office be located within their State.)

Rationale: The ORC perceived that the legislation will make participation for Missouri based MBE/WBE firms, as well as MBE/WBE firms from states with requirements similar to Missouri's more equitable. The ORC recognizes that this legislation will not increase MBE/WBE participation, but it will assist in leveling the playing field.

2. The ORC discussed the need for a prompt payment statute for MBE/WBE subcontractors. They decided to refer the matter to the Minority Business Advocacy Commission for study and appropriate implementation.

Conclusion

The Oversight Review Committee (ORC) recommended a new executive order that requires expanded and increased policy and procedures for compliance with the goals and objectives of Executive Order 98-21. Assuming the new EO is issued, the ORC will review and monitor the states' compliance with the strengthened requirements. Pursuant to EO 98-21 the ORC will continue to review and monitor compliance with the existing requirements. The ORC will rely on OA; the Office of Equal Opportunity; and all other state agencies to compile and provide data and information that will keep the members apprised of continuing efforts to meet the target goals and objectives of any executive order.

Appendix

The following tables show MBE/WBE compliance by each state departments from 1996 through 2003. Some WBE data were not available until 1999.

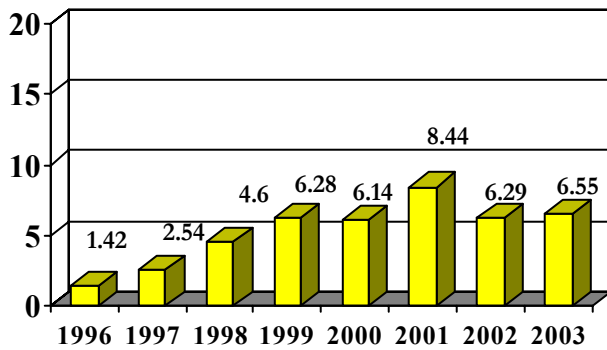
The tables illustrate that while the State of Missouri made progress toward achieving the goals and objectives of the Disparity Study recommendations and the targets of EO 98-21, the goals and targets were not reached consistently by all agencies.

MBE minimum participation was set at 10% by EO 98-21 and WBE minimum participation at 5%.

OEO Tables for all State Agency Compliance 1996-2003

**MBE EXPENDITURES
OFFICE OF ADMINISTRATION**

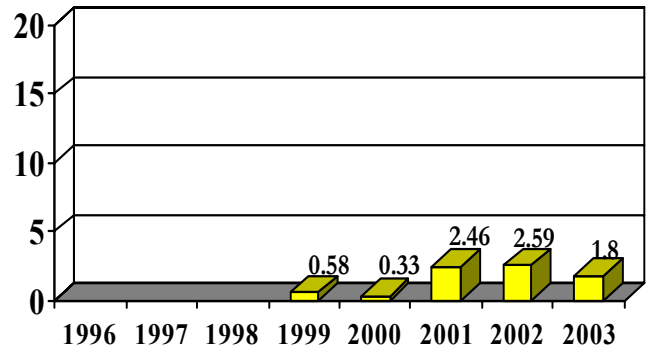
July 1, 1996 – June 30, 2003



Note: Oct. 1 thru June 1, 1996

**WBE EXPENDITURES
OFFICE OF ADMINISTRATION**

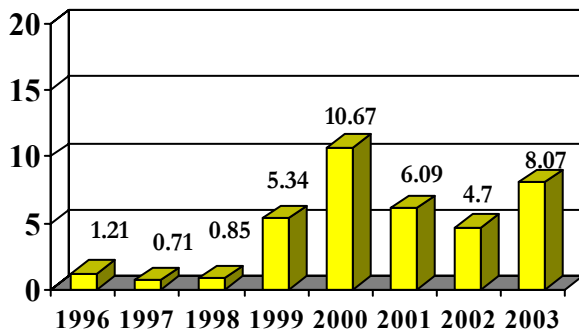
July 1, 1996 – June 30, 2003



Note: WBE data not captured until 1999

**MBE EXPENDITURES
AGRICULTURE**

July 1, 1996 - June 30, 1996

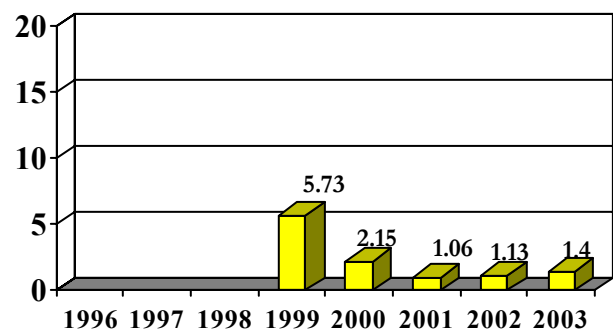


30, 2003

Note: Oct. 1 thru June 1, 1996

**WBE EXPENDITURES
AGRICULTURE**

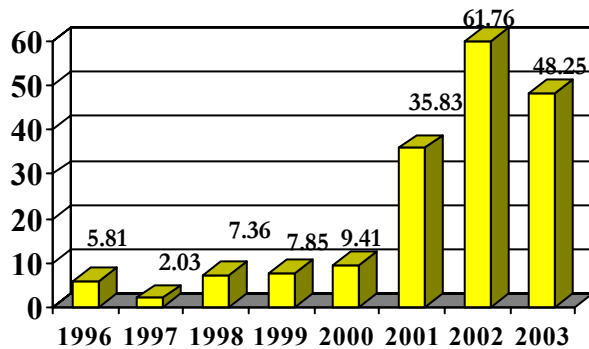
July 1, 1996 – June



Note: WBE data not captured until 1999

MBE EXPENDITURES INSURANCE

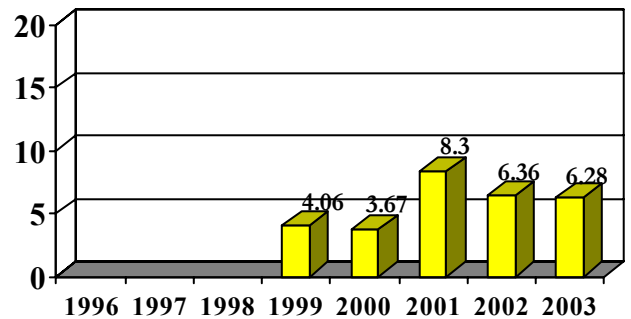
July 1, 1996 – June 30, 2003



Note: Oct. 1 thru June 1, 1996

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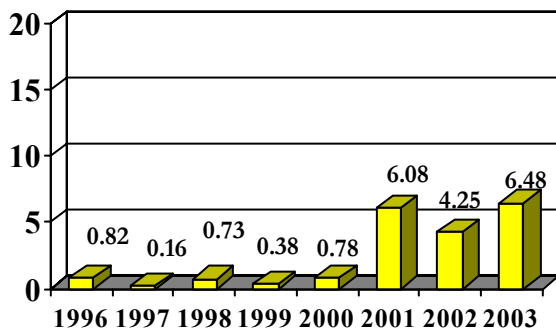
July 1, 1996 – June 30, 2003



Note: WBE data not captured until 1999

MBE EXPENDITURES CONSERVATION

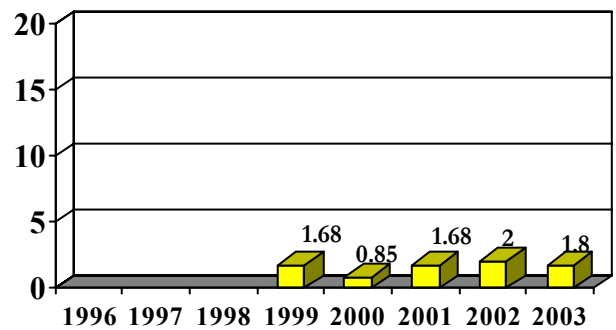
July 1, 1996 – June 30, 2003



Note: Oct. 1 thru June 1, 1996

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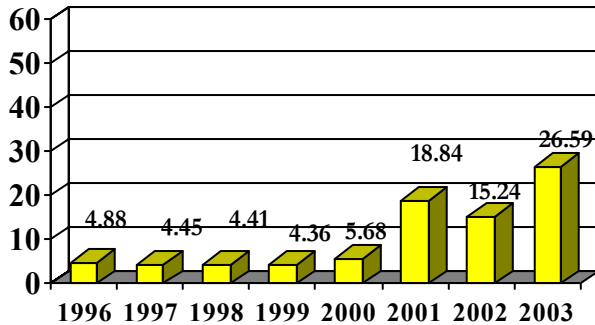
July 1, 1996 – June 30, 2003



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MBE EXPENDITURES ECONOMIC DEVELOPMENT

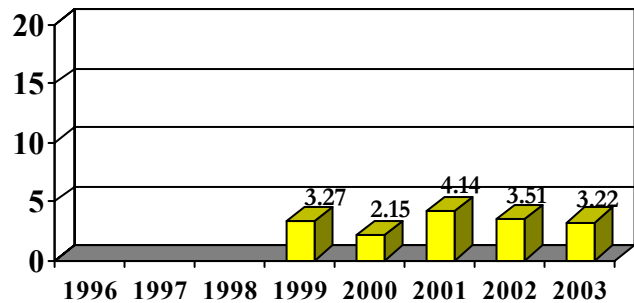
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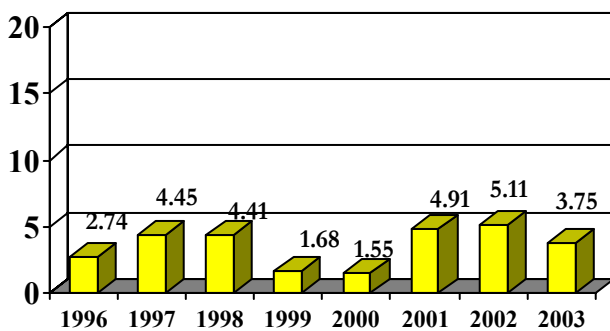
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MBE EXPENDITURES ELEM. & SEC. EDUCATION

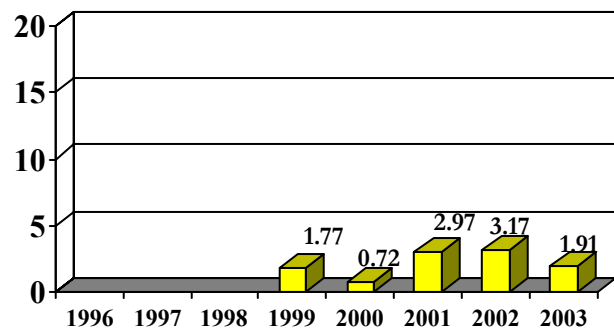
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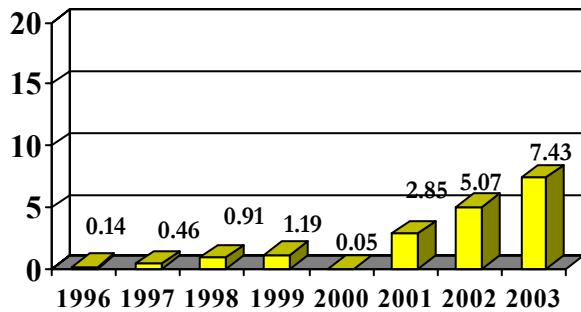
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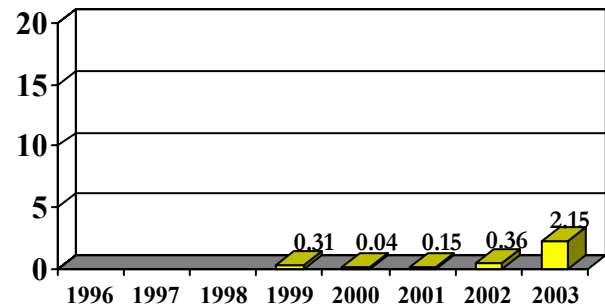
July 1, 1996 – June 30, 2003



Note: Oct. 1 thru June 1, 1996

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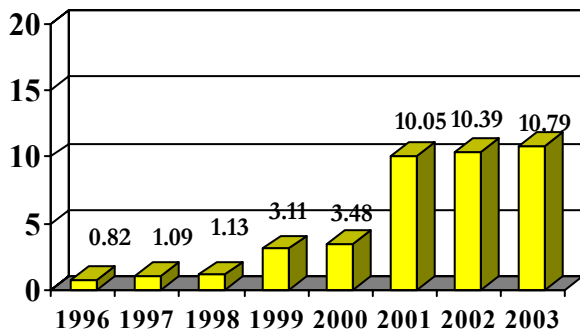
July 1, 1996 – June 30, 2003



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MBE EXPENDITURES HEALTH & SENIOR SERVICES

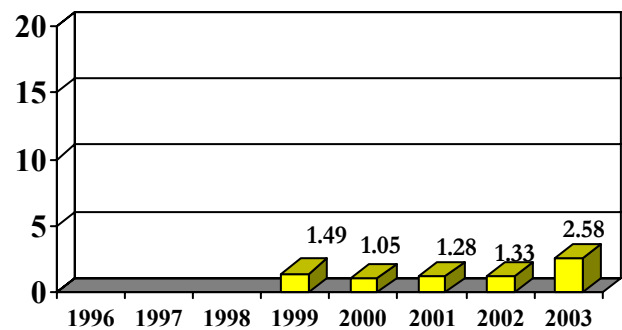
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WBE EXPENDITURES HEALTH & SENIOR SERVICES

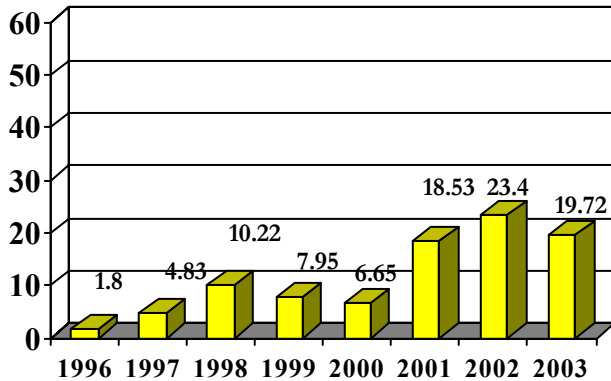
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MBE EXPENDITURES LABOR & IND RELATIONS

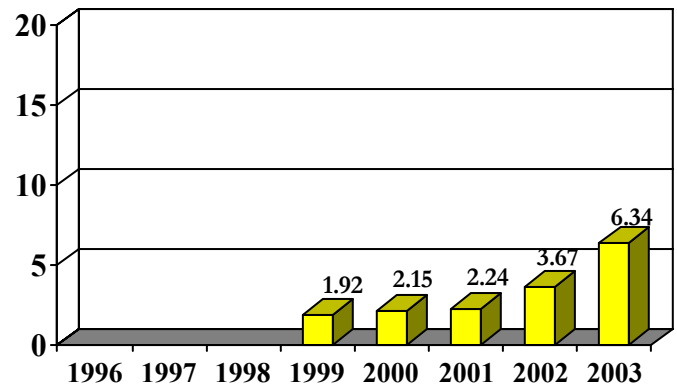
July 1, 1996 – June 30, 2003



Note: Oct. 1 thru June 1, 1996

WBE EXPENDITURES LABOR & IND RELATIONS

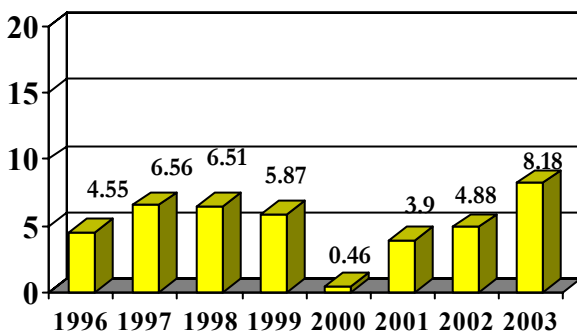
July 1, 1996 – June 30, 2003



Note: WBE data not captured until 1999

MBE EXPENDITURES MENTAL HEALTH

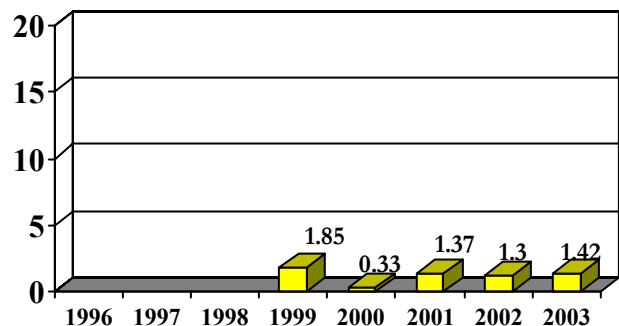
July 1, 1996 – June 30, 2003



Note: Oct. 1 thru June 1, 1996

WBE EXPENDITURES MENTAL HEALTH

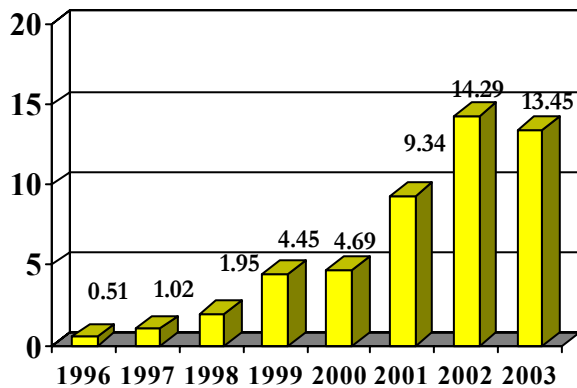
July 1, 1996 – June 30, 2003



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MBE EXPENDITURES NATURAL RESOURCES

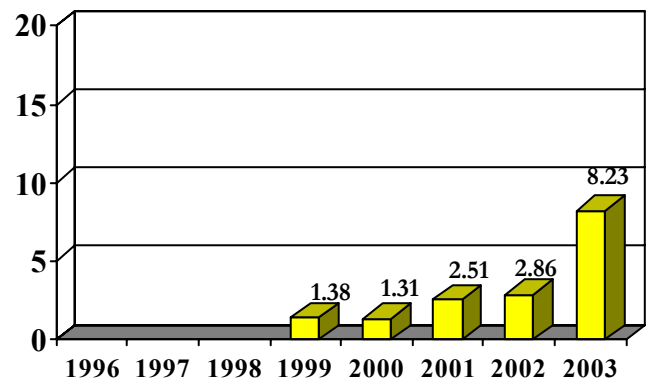
July 1, 1996 – June 30, 2003



Note: Oct. 1 thru June 1, 1996

WBE EXPENDITURES NATURAL RESOURCES

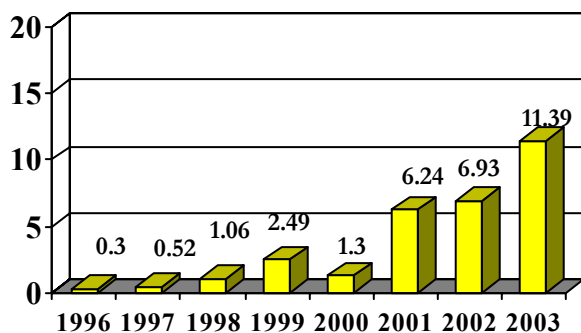
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Note: WBE data not captured until 1999

MBE EXPENDITURES PUBLIC SAFETY

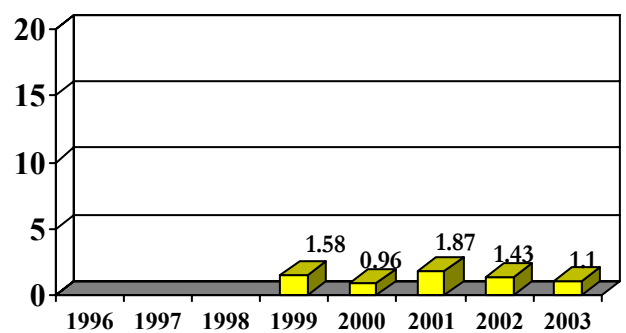
July 1, 1996 – June 30, 2003



Note: Oct. 1 thru June 1, 1996

WBE EXPENDITURES PUBLIC SAFETY

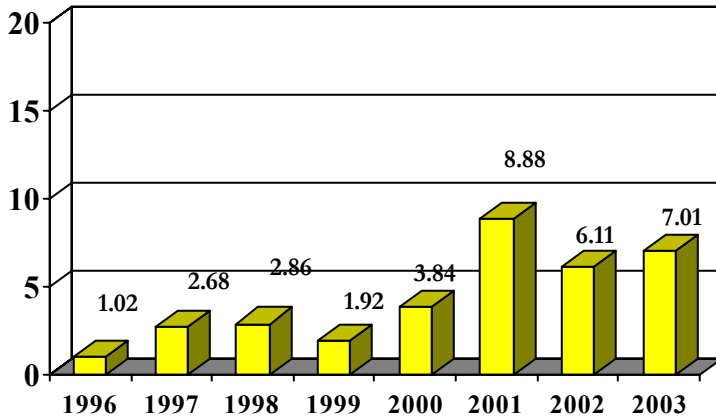
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MBE EXPENDITURES REVENUE

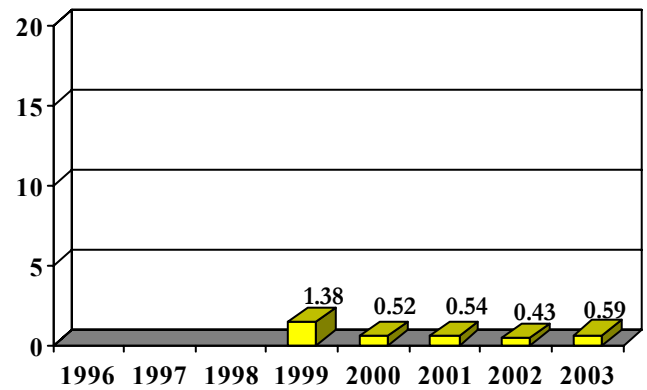
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Note: Oct. 1 thru June 1, 1996

WBE EXPENDITURES REVENUE

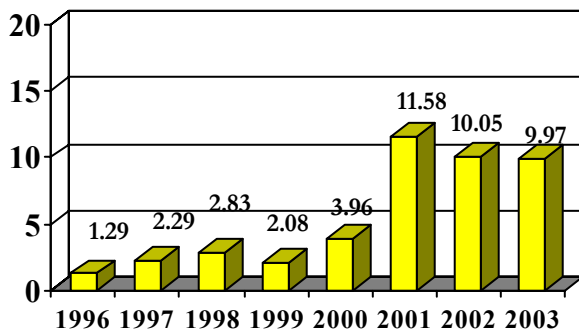
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MBE EXPENDITURES SOCIAL SERVICES

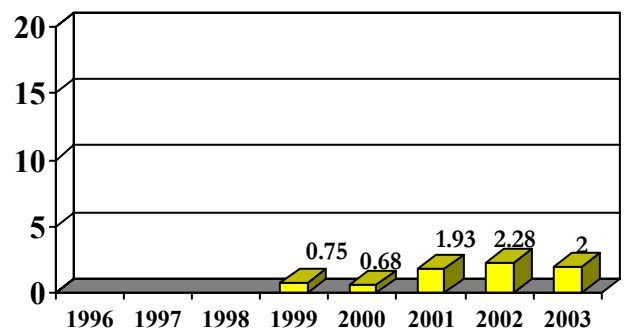
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WBE EXPENDITURES SOCIAL SERVICES

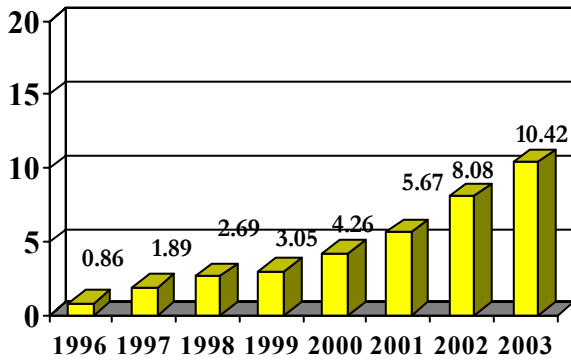
July 1, 1996 – June 30, 2003



Note: WBE data not captured until 1999

MBE EXPENDITURES CORRECTIONS

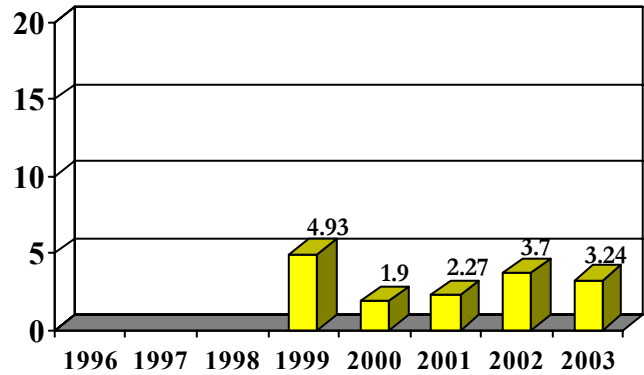
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WBE EXPENDITURES CORRECTIONS

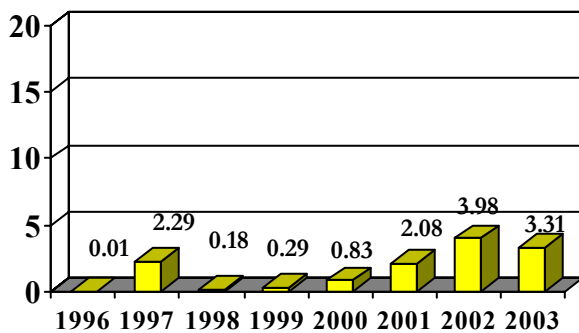
July 1, 1996 – June 30, 2003



Note: WBE data not captured until 1999

MBE EXPENDITURES TRANSPORTATION

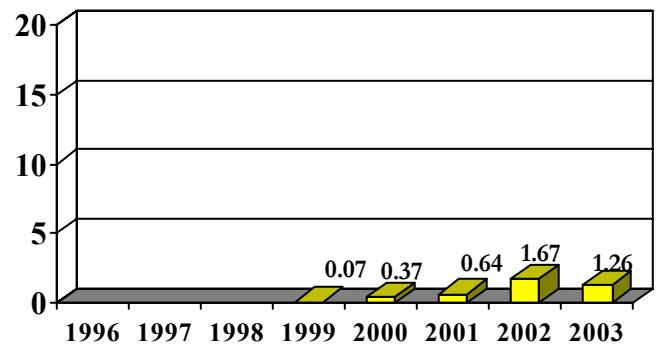
July 1, 1996 – June 30, 2003



Note: Oct. 1 thru June 1, 1996

WBE EXPENDITURES TRANSPORTATION

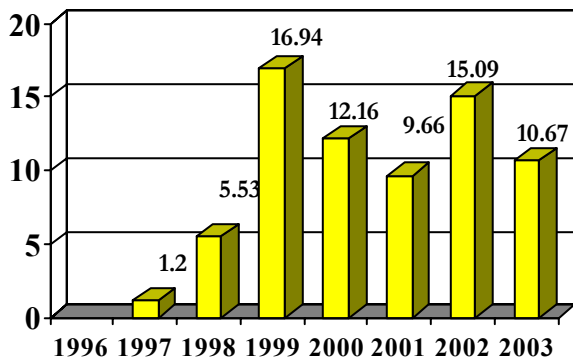
July 1, 1996 – June 30, 2003



Note: WBE data not captured until 1999

**MBE EXPENDITURES
CI – DESIGN & CONSTRUCTION**

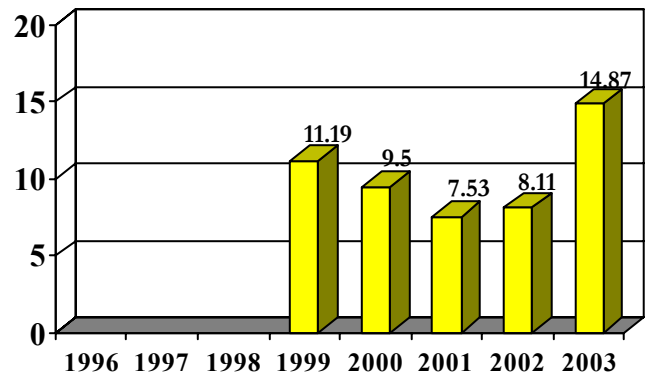
July 1, 1996 – June 30, 2003



Note: Oct. 1 thru June 1, 1996
FY 2000 CI data not available at reporting

**WBE EXPENDITURES
CI – DESIGN & CONSTRUCTION**

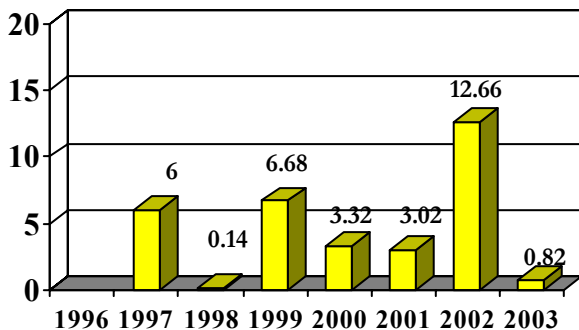
July 1, 1996 – June 30, 2003



Note: WBE data not captured until 1999
FY 2002 CI data not available at reporting

**MBE EXPENDITURES
CI- CONSERVATION**

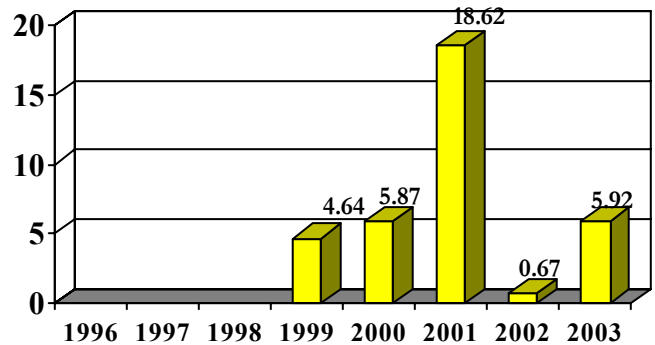
July 1, 1996 – June 30, 2003



Note: Oct. 1 thru June 1, 1996
FY 2000 CI data not available at reporting

**WBE EXPENDITURES
CI- CONSERVATION**

July 1, 1996 – June 30, 2003

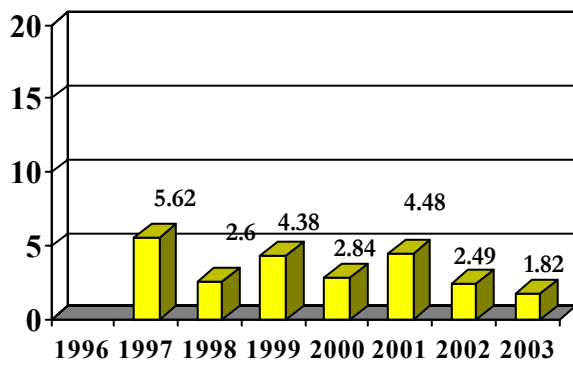


Note: WBE data not captured until 1999
FY 2000 CI data not available at reporting

MBE EXPENDITURES

CI – MoDOT

July 1, 1996 – June 30, 2003

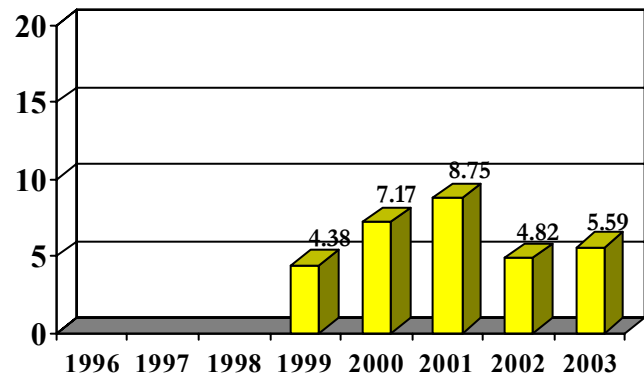


Note: Oct. 1 thru June 1, 1996
FY 2000 CI data not available at reporting

WBE EXPENDITURES

CI – MoDOT

July 1, 1996 – June 30, 2003



Note: WBE data not captured until 1999
FY 2000 not available at reporting